

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 26 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0079-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
GLEN ALAN HUGGINS,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20050551

Honorable Robert Duber II, Judge

REVIEW GRANTED; RELIEF DENIED

Glen A. Huggins

Tucson  
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner Glen Huggins seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Huggins has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Huggins was convicted of one count of possession of a dangerous drug and one count of possession of drug paraphernalia. The trial court imposed presumptive, concurrent prison terms, the longer of which was ten years, and this court affirmed Huggins’s convictions and sentences on appeal. *State v. Huggins*, No. 2 CA-CR 2006-0389 (memorandum decision filed Oct. 16, 2007). Thereafter, Huggins sought post-conviction relief pursuant to Rule 32, the trial court denied relief after a hearing, and this court denied relief on review. *State v. Huggins*, No. 2 CA-CR 2009-0376-PR (memorandum decision filed Mar. 30, 2010).

¶3 Huggins subsequently initiated a second Rule 32 proceeding, asserting in his notice claims of newly discovered evidence and ineffective assistance of appellate and Rule 32 counsel. Huggins’s counsel filed a notice stating she was “unable to find any claims for relief” and requesting time for Huggins to file a pro se supplemental petition. In his pro se petition and reply to the state’s response, Huggins argued trial counsel had been ineffective “in relation to plea negotiations,” a plea had not been “offered in conformance with the orders of the court or the Arizona Rules of Court,” and counsel had been ineffective in his first Rule 32 proceeding. He also filed a “supplement” to his reply in which he listed, without argument, “new witness[es]” and “new evidence.” The trial court denied relief, concluding Huggins was not entitled to effective assistance of counsel in his second Rule 32 proceeding.

¶4 Huggins moved for reconsideration of the trial court’s decision, arguing the court had erred in concluding he was not entitled to effective assistance and had “failed to address” arguments other than ineffective assistance which he had raised in his petition—

apparently that several of the Arizona Rules of Criminal Procedure had been violated in relation to a proffered plea agreement. He also provided some explanation of the “new” evidence and witnesses he had listed in the supplement to his reply. The court summarily denied the motion.

¶5 On review, Huggins essentially repeats the arguments he made below, noting the “new evidence” he purported to have discovered and arguing the trial court erred in concluding he was not entitled to effective assistance in his second Rule 32 proceeding. But, the trial court was correct. “[T]he non-pleading defendant has ‘no constitutional right to counsel or effective assistance in post-conviction proceedings’; although the non-pleading defendant has the right to effective representation on appeal, he has no ‘valid, substantive claim under Rule 32’ for ‘ineffective assistance on a prior [post-conviction relief] petition.’” *Osterkamp v. Browning*, 226 Ariz. 485, ¶ 18, 250 P.3d 551, 556 (App. 2011), quoting *State v. Krum*, 183 Ariz. 288, 292 & n.5, 903 P.2d 596, 600 & n.5 (1995) (alteration in *Osterkamp*).

¶6 Huggins’s claim about rule violations in relation to the proffered plea agreement is precluded by his failure to raise it earlier. See Ariz. R. Crim. P. 32.2(a)(3) (claim precluded if “waived at trial, on appeal, or in any previous collateral proceeding”). Likewise, his claims of ineffectiveness of trial counsel are precluded because they were adjudicated in his previous Rule 32 proceeding. See Ariz. R. Crim. P. 32.2(a)(2). And because Huggins failed to explain in his notice of post-conviction relief why either his rule-violation claim or his claim of newly discovered evidence had not been raised earlier as required by Rule 32.2(b), the trial court acted properly in summarily dismissing the

proceeding. Cf. *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) (appellate court obliged to affirm trial court's ruling if result legally correct for any reason). Thus, although we grant review, we deny relief.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge